

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

DYAD CONSTRUCTION, INC.

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

PCHB Nos. 88-87 & 88-88

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This is an appeal of Notices and Orders of Civil Penalties issued by the Washington State Department of Ecology to Dyad Construction, Inc., for alleged violations of the Emission Testing Process (Motor Vehicle Emission Control) RCW 70.120.

A formal hearing was held on March 27, 1989 at the King County Courthouse, Seattle, Washington. Board members Wick Dufford, Chairman; Judith A. Bendor, Member; and Harold S. Zimmerman, Presiding; were present. Appellant Dyad Construction, Inc., was represented by Jon D. Egge, Vice-president of Dyad. Respondent

1 Department of Ecology was represented by Laurie Sillers Halvorson,
2 Assistant Attorney General. The proceedings were recorded by a
3 reporter with Gene Barker and Associates.

4 Opening statements were made. Witnesses were sworn and
5 testified. Exhibits were admitted. From the testimony, exhibits and
6 contention of the parties, the Board makes these

7 FINDINGS OF FACT

8 I

9 On December 4, 1987, Mr. Jon Egge, Vice-President of Dyad
10 Construction, Inc., completed out-of-area emission exemption
11 statements for two vehicles owned by Dyad, whose offices are located
12 at 19404 Woodinville/Snohomish Road, Woodinville, Washington 98072.

13 II

14 The emission exemption statements applied to vehicles with
15 license number LX2612 and license number LL6625. These vehicles were
16 registered at Dyad's Woodinville address which is within the emission
17 test area.

18 III

19 Mr. Egge's statement regarding vehicle licensed LX2612 said it
20 was now garaged at 9525 - 183rd Place NE, Arlington, Washington,
21 98229, and would be garaged and operated outside the emission test
22 area until December 31, 1988. Regarding vehicle licensed LL625, Mr.
23 Egge stated it was now garaged at 40427 NE 60th, Snoqualmie,
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1 Washington, 98065, and would be garaged and operated outside the
2 emission test area until December 31, 1988.

3 IV

4 Based on information in the statements, on December 8, 1987, Dyad
5 was granted exemptions from the emissions testing process for vehicle
6 licensed LX2612 and vehicle licensed LL6625.

7 V

8 On January 27, 1988, Department of Ecology employees Elaine
9 Cubbins and Carol Knudson, during routine surveillance conducted by
10 them, observed vehicle licensed LX2612 and vehicle licensed LL6625 at
11 Dyad's Woodinville address. Ecology records indicated neither vehicle
12 had completed the emission testing process at the time of observation.

13 VI

14 On June 3, 1986, Department of Ecology issued Order No. DE 88-130
15 to complete the emission testing process, regarding vehicle LL6625;
16 issued Penalty No. DE 88-131 for \$250 pursuant to WAC 173-422-175
17 regarding vehicle LL6625; issued Order No. DE 88-128 to complete the
18 emission testing process regarding vehicle LX2612; and issued Penalty
19 No. DE 88-129 for \$250 pursuant to WAC 173-422-175, regarding vehicle
20 LX2612.

21 VII

22 Dyad appealed the four penalties and orders to the Pollution
23 Control Hearings Board. An application for relief from the orders,
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1 filed on the Department June 17, 1988, was denied prior to the appeal
2 to this Board.

3 VIII

4 On December 6, 1988, Mr. Egge of Dyad again completed an
5 out-of-area emissions exemption statement for vehicle licensed
6 LX2612. In that statement, Mr. Egge stated that vehicle LX2612 was
7 now garaged at 3575 Bell Beach Road, Langley, Washington. In December
8 1988, Dyad Construction, Inc., completed the inspection process for
9 vehicle LL6625.

10 IX

11 Jon Egge, Vice-President of Dyad Construction, Inc., told the
12 Board in person that he did not dispute the information brought before
13 the Board. He verbally expressed his opinion that he had not done
14 anything illegal. He said he feels he did not violate the intent of
15 the emissions testing program because the employees to whom the
16 vehicles were assigned lived and worked outside the emission test
17 area. The vehicles were garaged outside the area and in most of their
18 operation performed outside the emission test area. He expressed the
19 opinion that whereas the exempted vehicles in question may enter the
20 emission control area on an occasional basis, like many other vehicles
21 from other areas, he does not believe this violates the law as
22 intended.

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2 X

3 Any Conclusion of Law deemed to be a Finding of Fact is hereby
4 adopted as such. From these Findings of Fact, the Board makes these

5 CONCLUSIONS OF LAW

6 I

7 The Pollution Control Hearings Board has jurisdiction over these
8 issues and these parties under RCW 43.21B.

9 II

10 Chapter 70.120 RCW governs motor vehicle emission control and ch.
11 173-422 WAC implements that statute. The authority granted to Ecology
12 under ch. 70.120 RCW supplements Ecology's authority under ch. 70.94
13 RCW. RCW 70.120.130. RCW 70.120.040(4) directs Ecology to administer
14 a motor vehicle emission inspection program for all motor vehicles
15 registered within emission contributing areas. An emission
16 contributing area is an area where motor vehicles contribute
17 significantly to motor vehicle related air quality standards in a
18 noncompliance area. RCW 70.120.040(2). Parts of the cities of
19 Seattle, Bellevue, and Spokane are noncompliance areas for carbon
20 monoxide. WAC 173-422-040. The central Puget Sound basin is a
21 noncompliance area for ozone. WAC 173-422-040.

22 III

23 Motor vehicle emission inspections are an important tool in
24

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1 reducing air pollution:

2 Motor vehicles are the primary emitters of carbon
3 monoxide and emit significant quantities of
4 hydrocarbons and oxides of nitrogen. Emission controls
5 required by the federal government are designed to
6 reduce motor vehicle related air pollution. However,
7 the effectiveness of these controls is substantially
8 reduced through deterioration, maladjustment, and
9 tampering. Motor vehicle emission inspection serves to
10 identify high polluting vehicles and to reduce
11 emissions when such can be accomplished at reasonable
12 cost. These rules establish the emission standards,
13 testing procedures, and associated activities necessary
14 to implement a program of air pollution prevention and
15 control involving motor vehicle emission inspection.
16 WAC 173-422-010.

11 IV

12 All motor vehicles not exempt under WAC 173-422-170 which are
13 registered within the boundaries of an emission contributing area as
14 listed in WAC 173-422-050 are subject to the emission inspection
15 requirements of ch. 173-422 WAC. WAC 173-422-030. WAC 173-422-050
16 defines emission contributing areas in the Puget Sound and Spokane
17 regions by zip code. The zip code 98072 is within the Puget Sound
18 emission contributing area and the emission inspection program applies
19 to that zip code. WAC 173-422-050.

20 V

21 WAC 173-422-170 provides that certain vehicles are exempt from
22 inspection requirements. WAC 173-422-170(10)(a) states:

23 Vehicles garaged and operated out of the emission
24 contributing area and not returning prior to six
months following the registration renewal date, may be

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exempted provided the registered owner/authorized agent provides a signed statement which includes:

- (i) The registered owner's name and address.
(ii) The vehicle license number.
(iii) A statement that the vehicle is now garaged and operated outside the emission contributing area and will not be returning to the emission contributing area prior to six months following the registration renewal date. (emphasis added)

VI

Because Dyad's zip code is within an emission contributing area, Dyad must either complete the emission inspection process for vehicles it owns or comply with exemption procedures. To comply with the WAC 173-422-170(10)(a) exemption, the vehicle involved must be garaged and operated outside of an emission contributing area and not return before six months following the registration renewal date. Dyad did not comply with these requirements. Therefore, Dyad was subject to penalty under WAC 173-422-175 and subject to order under RCW 70.94.332.

VII

Ecology ordered a simple and inexpensive remedy; Dyad was to complete the inspection process for vehicles LX2612 and LL625. Dyad now has completed the inspection process for vehicle LL625, albeit one year late, thus complying with Order No. DE 88-130. However, Dyad has not completed the inspection process for vehicle LX2612. Instead, it has chosen to remove the vehicle permanently from the emission test area.

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VIII

The purpose of civil penalties is to promote compliance with the law. Noncompliance has been corrected, a year after the infractions. There was no evidence that the company has engaged in a pattern of further violations. Accordingly, we believe that the intended educational function of these penalties has been served.

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Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From these Conclusions of Law, the Board enters this

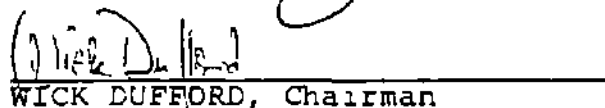
ORDER

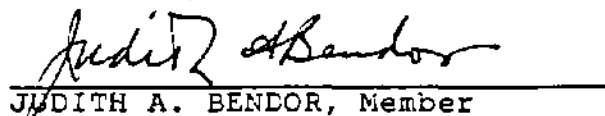
Notices and Orders of Civil Penalties No. DE 88-129 and DE 88-131 are AFFIRMED, with \$100 suspended from each penalty, provided that during the next two year(s), appellant does not violate any air pollution laws or regulations in the State of Washington.

DONE this 15th day of May, 1989.

POLLUTION CONTROL HEARINGS BOARD


HAROLD S. ZIMMERMAN, Presiding


WICK DUFFORD, Chairman


JUDITH A. BENDOR, Member

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